

**Response by Cet Law to the DEFRA Consultation on the Principles of Marine Net Gain**

Cet Law is an international not for profit organisation which works to translate science and knowledge into protection. As global practices, science and public opinion evolve, so too should our laws. This is why Cet Law focuses on furthering law and policy to protect cetaceans - whales, dolphins and porpoises - and their ocean and freshwater habitats.

Cet Law works in partnership with global non-profits, businesses, government agencies and universities. By bridging gaps between knowledge and policy, we translate sound science and introduce best practices into legal solutions to protect cetaceans and their habitats for present and future generations.

<p><b>1</b></p>	<p><b>Do you agree that marine net gain should assess impacts on species as well as habitats?</b></p> <p>Yes</p>
<p><b>1a</b></p>	<p><b>Please explain your answer</b></p> <p>The interconnected and dynamic nature of the marine environment means that biodiversity losses associated with a development may not always fall within the boundary of a development.</p> <p>In the marine environment, the concept of a ‘habitat’ is less clearly defined than in the terrestrial environment. In many instances, it will be difficult to use a habitat as a proxy for biodiversity. Many marine species are highly mobile, for example, marine mammals, and therefore a particular site may form part of a species migratory route or breeding, feeding or shelter at a particular time. An area may also be a key component of a prey species, thus having an indirect impact on a species, or a wider ‘ecosystem’ impact. Because of the dynamic nature of the ocean, an adjacent or close habitat may also be significantly affected by activities.</p> <p>Further, in the marine environment, the ‘habitat’ of many highly mobile species is the ocean itself rather than a particular component of it that is easily defined and quantified, as would be the case in the terrestrial environment where, for example, a particular feature is known to house a particular species. Accordingly, the presence of an offshore development could have a much greater impact on a</p>

	<p>species than is able to be quantified by merely attempting to quantify what falls within the boundary of a development at a particular point in time.</p> <p>Species assessments are undertaken as part of the consenting process for development in the marine environment, for example, through the Strategic Environmental Assessment, Environmental Impact Assessment process and the Habitats Regulations Assessment process (where applicable). Such assessments will consider both mobile species, species that are present seasonally, and those that are more resident at a particular site. This information can be used to inform marine net gain and will avoid the duplication of effort through the use of data already considered in the consenting process. In the limited circumstances where such an assessment is not undertaken as part of marine development, species assessment should be included as part of the application for a licence or consent and this should be used to inform marine net gain. This should not be in place of assessments of the habitats being directly affected.</p>
<p><b>2</b></p>	<p><b>Do you agree that marine net gain interventions should be assessed with reference to environmental benefits that biodiversity enhancement can yield?</b></p> <p>Yes</p>
<p><b>2a</b></p>	<p><b>Please explain which extra environmental benefits and services should be included within marine net gain assessment</b></p> <p>We are increasingly learning how marine species provide important ecosystem services through their mere existence and their own natural processes which engineer the ecosystem to provide services such as carbon capture. Enhancing biodiversity within the marine environment will maximise the amount of carbon the ocean is capable of soaking up and help to decelerate the negative impacts of climate change on the ocean, such as ocean acidification. Research and knowledge in this area, referred to as ‘blue carbon’ is advancing rapidly and it is now readily accepted by many that we must protect nature in order to solve the climate crisis. In addition, marine net gain that is nature based will have a positive impact on the levels of pollutants and water quality.</p> <p>Accordingly, marine net gain that delivers a carbon benefit, examples include the planting of sea grass or the protection of cetaceans, or a water quality benefit, eg through oyster beds, will not only have a biodiversity and ecosystem benefit, but a wider climate and environmental benefit.</p>

	<p>Whilst marine net gain is a new concept, consideration of it as a wider environmental net gain could add increased levels of complexity. This should be considered within the proof of concept projects and by piloting such an approach it will be possible to have a better understanding of how it can operate in practice and what safeguards need to be implemented to ensure that additional environmental benefit is provided where this is considered as part of the net gain.</p> <p>Based on the above, in many instances, the same intervention could deliver a number of outcomes – enhance biodiversity, sequester carbon, improve water quality, each of which will be difficult to quantify and separate out as an intervention on its own. It is therefore considered that a more scientifically robust approach could be to permit a single developer to purchase the full suite of benefits generated by a single intervention and consider this in the proof of concept projects.</p>
<p><b>3</b></p>	<p><b>Do you agree with our proposal to discount potentially positive incidental effects whose benefits are subject to significant uncertainty, from marine net gain assessments?</b></p> <p>Yes</p>
<p><b>3a</b></p>	<p><b>Please explain your answer</b></p> <p>Yes, but not just where there is significant uncertainty, but a lower threshold level of uncertainty, for example, less than 50% certainty.</p> <p>Where ‘positive’ effects are incidental, they are not a true net gain. But, where there is more extensive research, for example, on the impacts of infrastructure that has been around longer, it could be considered as part of the assessment framework to measure both the projects impacts and benefits.</p> <p>As noted in the consultation document, our knowledge of the marine environment is much more limited than that of terrestrial or intertidal environments, where we are also still constantly gaining new understandings. As such, as these benefits are unclear, so too is the true extent of the negative impacts which our activities are having on the ocean and a precautionary approach is therefore appropriate. As humans looking through the lens of our own limited capabilities we tend to see the positive, while not necessarily understanding the extent of the negative. The creation of habitat does not necessarily mean that biodiversity is thriving, but merely some species are potentially adapting to what has been forced upon them in their environment. We also do not understand the extent of any harm that the</p>

	<p>pollutants brought by foreign materials and activities as well as the acoustic disturbances may cause, whether acute or chronic, to the marine environment and the biodiversity residing there. Marine net gain is limited to the extent by which we truly understand the processes and interconnectedness, thus precaution should be taken in all instances.</p>
<b>4</b>	<p><b>Do you agree that we should prioritise a contributions-style approach, whilst still exploring a metric-style approach?</b></p> <p>Yes</p> <p><b>Please specify and explain your answer</b></p>
<b>4a</b>	<p><b>Are there other approaches to measuring impacts that we should explore?</b></p> <p>As noted above, the precautionary principle should be incorporated into determinations of harm as well as proportionality and appropriateness. Our limited understanding likely underestimates the impact anthropogenic activities have in our oceans and to the biodiversity therein.</p> <p>The contributions-style approach should be prioritised initially as the marine net gain regime develops. This will enable the marine net gain regime to be ready to be implemented as soon as possible. However, serious consideration should be made regarding keeping the net gain benefits tied to the project, whether that be geographically or to a species which is being impacted.</p> <p>In the meantime, the development of a biodiversity metric that is applicable to the marine environment can be being worked on and developed. The metric should form part of the proof of concept projects.</p>
<b>5</b>	<p><b>Do you agree that marine net gain should be a mandatory requirement for new development activities within the marine environment?</b></p> <p>Yes</p>
<b>6</b>	<p><b>If you answered yes to question 5, do you agree with the list of consenting and licensing regimes that marine net gain requirements should be introduced within? Are there any others we should consider?</b></p> <p>Yes</p> <p>Others to consider: Where elements of a project do not need a licence, for example, international telecommunications and power cables outside UK territorial waters</p>

	(beyond 12nm) (however, it is noted that associated works such as pre-lay dredge and disposal and cable protection works may require a licence).
<b>7</b>	<p><b>Are there activities and/or sectors that are regulated by these regimes which should not be covered by net gain requirements?</b></p> <p>Yes – burials at sea.</p>
<b>7a</b>	<p><b>If yes, please explain your answer, including any relevant de minimis thresholds for each activity or regime</b></p> <p>N/A</p>
<b>8</b>	<p><b>Which types of pressure reduction measures can be delivered by industry through marine net gain?</b></p> <p>Removal of marine litter including discarded fishing gear as discussed in the consultation document.</p> <p>In addition, the designation of ‘no-go’ zones similar to Highly Protected Marine Areas (HMPAs) that will allow protection and full recovery of marine ecosystems. HMPAs are defined in the Benyon review and government response as “<i>areas of the sea that allow the protection and recovery of marine ecosystems by prohibiting extractive, destructive and depositional uses and allowing only non-damaging levels of other activities to the extent permitted by international law</i>”. By setting aside significant areas with high levels of protection, HPMAs will allow nature to recover and ecosystems to thrive. In order to be meaningful, areas designated as no-go zones for the purpose of marine net gain or as HMPAs must cover a proportionate area and be managed appropriately.</p> <p>We are aware that consultation on five candidate HPMAs is currently open.</p> <p>In addition, noise should be an important consideration in any activity. The ocean is an acoustic world and we are only beginning to understand how anthropogenic noise and vibrations disturb marine species from coral larvae to marine mammals who depend on sound and acoustic cues for basic life functions.</p>
<b>9</b>	<p><b>Are there any other types of intervention that should be encouraged, including innovative emerging techniques?</b></p> <p><b>Tell us about any other types of interventions</b></p> <p>As noted above, incentives that encourage means and ways to reduce anthropogenic noise in the ocean are critical and should form a basic consideration</p>

	<p>to any project on both an individual and cumulative scale from exploration and construction to end of life and decommissioning.</p> <p>While it is beyond our expertise to discuss particular techniques and technologies, innovative approaches could be funded through the proposed Marine Recovery Fund.</p>
<b>10</b>	<p><b>Do you agree with the principle of taking both a site-level and a strategic approach to marine net gain?</b></p> <p>Yes</p>
<b>10a</b>	<p><b>Please explain your answer</b></p> <p>In order to answer this question, we need to have a greater understanding of what will be considered as a ‘site’, for example, for an offshore windfarm, the footprint of the turbines and the cable will be much lower than the actual area impacted, therefore, will the ‘site’ be as per the area assessed as part of the planning application or environmental impact assessment?</p> <p>‘On-site’ is a much more difficult concept than for onshore development and depending on what constitutes the ‘site’, will impact what net gain can be delivered on the site. Many impacts are also off-site.</p> <p>In addition, consideration should be made not only to construction activities but also end-of-life and decommissioning activities which will have detrimental effects on the marine environment.</p> <p>There is also concern that an area may become a ‘sacrifice zone’ meaning that development takes place in one place yet the efforts for net gain are off-site at other places. In just one instance this may create harm from which an area may not recover. In the cumulative of many projects that continue to disregard an area, this will multiply the harm to that ecosystem and discourage meaningful addressing of biodiversity concerns in the area. Such action has negative implications for the local ecosystems as well as environmental justice concerns for nearby coastal communities.</p> <p>We agree with the principle of taking both a site-level and strategic approach to net gain, but the approach should be considered on an individual basis and with a broader consideration of the marine ecosystem as a whole.</p>
<b>11</b>	<p><b>What types of site-based interventions should be incentivised through marine net gain?</b></p>

	<p>As per our response to q10a above, this will depend on what is considered to be the site for the purposes of marine net gain. Site-based interventions will be difficult for species due to mobility of many marine species, therefore, a site-based approach should only be used where particular features can be enhanced to benefit the marine environment.</p> <p>As noted above, attention should be paid to the temporary and continuous acoustic and vibrational disturbances that anthropogenic activities have on marine species. Noise can lead to both acute and lethal harm to marine animals as well as sublethal harm, causing chronic stress and changes in behaviour. Marine net gain must incorporate not just the impact of the noise itself in the short term, but also the chronic and seasonal stress increased activity and noise places on the vast majority of marine species, some which are mobile and others which are not.</p>
<p><b>12</b></p>	<p><b>What types of strategic interventions could be incentivised through marine net gain?</b></p> <p>Given the success of no-go areas in other parts of the world, for both ecosystem and fisheries recovery, we would like to see such interventions incentivised and funded through the Marine Recovery Fund. Management and funding for such areas will form a key part of their development, and the use of marine net gain to support such development will provide a great benefit.</p> <p>However, there is a risk that funds from marine net gain will be used where there is already a statutory obligation and where a statutory body is required to fund. The risks and benefits of using funds from marine net gain to provide or support an intervention that is already a statutory requirement must be carefully considered. Given the current economic climate, funds from marine net gain could be used to give a much needed boost or kick start to conservation initiatives and interventions.</p> <p>Buffer zones should also be considered and how to ensure that there are meaningful buffer zones for important biological areas so that the area and the biodiversity relying upon it are protected from pollution, debris and noise.</p> <p>Lastly, as noted above, noise reduction strategies based on acute and chronic sounds and vibrations created by the project, taking into account the project alone as well as how it adds to the cumulative noise generated from anthropogenic activities should be incentivised. Such strategies should include the seasonal biological functions of fish, corals, marine mammals and other marine species.</p>
<p><b>13</b></p>	<p><b>Should accessing strategic interventions be conditional in some cases?</b></p>

	Yes
<b>13a</b>	<p><b>If yes, which site-based features should be considered priorities ('prescribed features') ahead of strategic interventions? Please explain your answer</b></p> <p>Examples of 'prescribed features' that should be prioritised include sea grass beds and other essential habitat such as that for oysters. In addition, and as noted above, consideration should be taken on the placement of the site and whether in the cumulative, we are creating a sacrifice zone, in essence prohibiting by our own activities the meaningful biological maintenance or recovery of the site.</p>
<b>14</b>	<p><b>Do you agree that marine net gain interventions should not initially be restricted to the 'locality' of the main development?</b></p> <p>Yes</p>
<b>14a</b>	<p><b>Please explain your answer</b></p> <p>Although we agree that they should not be initially restricted, there should be a presumption of preference for keeping the marine net gain benefit tied to the locality. This is because we likely underestimate the harms that we are doing to our ocean environment and the burdens that those areas and the communities tied to them, will truly bear. By not restricting to the locality or at least creating a preference that can be overcome, the government may in effect squash innovation in thinking and design to address the impacts that the activities will have in the place where it is located. Lastly, as noted above, this could effectively create sacrifice zones which are harmful to ecosystems and communities.</p> <p>However, as set out in our response to question 1, the interconnected and dynamic nature of the marine environment means that impacts and biodiversity losses associated with a development may not always fall within the boundary of a development. Some developments can have wide ranging impacts, for example, through underwater noise, displacement of prey species and impacts on highly mobile species. In these cases, where the developer can justify and overcome the presumption of preference and also tie interventions to a species or ecosystem that will be impacted by the project, the preference could be lifted on a case-by-case basis.</p>
<b>15</b>	<p><b>Do you agree that the enhancement of designated features within statutory MPAs should be allowed in the marine environment?</b></p> <p>Yes, in some instances.</p>



<b>15b</b>	<b>Please provide evidence to support your view</b>  This must be in addition to statutory obligations within the MPAs and should include additional burdens. For example, if marine net gain of 10% is required, a developer which chooses to enhance designated features of an already-existing MPA (a space and place that is already being protected), that obligation should rise to 20% for example. This will discourage developers from finding a lack of feasibility for the marine net gain interventions related to the harm that they are doing to the environment and will not impede the obligations and commitment government should have to improving these areas, while acknowledging and discouraging the creation of sacrifice zones which are harmful to ecosystems and coastal communities.
<b>16</b>	<b>Would you like your response to be confidential?</b>
	No

**Cet Law**

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